

Off –Airport Aviation Easement/ Land Acquisition Project
Floyd Bennett Memorial Airport
Eminent Domain Procedure Law Public Hearing
Forest Enterprises Management Parcel (ID #303.11-1-4)
Written Responses to Public Comments

Written and verbal comments received during and after the public hearing have been grouped and categorized into similar topics and concise, factual and organized written responses have been prepared. The comments and questions have been reviewed in detail and the main point or summary has been listed below. Comments applicable to other projects, including the runway extension, have not been addressed but will be addressed during future public hearings. Positive comments in support of the project are not included below, but are appreciated and acknowledged.

1. a. *Comment/ Question:* If the County takes this property, and wetlands exist, what will the County do with the land if a NYS DEC wetland permit is not issued for future uses (including a potential runway extension)?
b. *Submitted by:* Fair, Beaty, Westcott
c. *Response:* This project generally involves the acquisition of approximately 4 acres of land within the future Runway Protection Zone (RPZ) and approximately 81 acres of permanent aviation easement over the remaining portions of the parcel. There are no known documented wetlands on the 4 acre parcel to be acquired in fee simple. The primary purpose of this acquisition is to mitigate obstructions to the navigable airspace identified in the (FAR) Part 77 Obstruction Evaluation, prepared by C&S Engineers, dated January 2002, and known to exist on this parcel. This acquisition will allow the County to prevent existing or proposed manmade objects, objects of natural growth or terrain from extending upward into navigable airspace, thereby providing safety to aircraft.

Planned short-term follow-on work consists of tree topping on approximately 20 acres of land. No ground disturbance will occur in the short term. Complete tree removal and earth grading is required and included in the Environmental Assessment for the Runway 1 Extension project. The tree removal areas are not within NYSDEC and Federal wetland boundaries as depicted on online databases or found during recent field wetland delineations. A wetland permit would not be required to top, clear or disturb the ground as a result of short or long term obstruction mitigation activities on this parcel.
2. a. *Comment/ Question:* Will this acquisition take the property off tax rolls?
b. *Submitted by:* Beaty, Maclean, Mandwelle
c. *Response:* Approximately 4 acres of land will be taken off the tax rolls, less than 5% of the total parcel area. The remaining portion of the parcel will be encumbered by an aviation easement which should not significantly affect the existing tax assessment. The land owner will still have the opportunity to develop and build on this parcel, generating additional tax revenue. Development is possible based on the land owners schematic layout plans and would be compliant with the aviation easement restrictions. A FAA airspace hazard study has already been completed by the landowners engineering consultant and approved by the FAA for development of the parcel. Within

the 81 acre easement area, 24 acres will have an allowable building height of less than 35 feet, and 57 acres will have allowable building heights in excess of 35 feet.

3. a. *Comment/ Question:* Is this project related to the Runway 1 extension project?

b. *Submitted by:* Beaty, Lynch

c. *Response:* The primary purpose of this project is to control airspace and to remove known obstructions to the existing runway end. This is a safety related project for the existing configuration, and is intended to be completed quickly. Since a 1,000 foot runway extension is shown on the approved Airport Layout Plan, the County is planning for the future and is acquiring the land and easements necessary to protect future needs. The County would like to complete this process once in an effort to minimize disruption to the landowner in the future and to eliminate the need to incur additional technical support costs. The four acre parcel to be acquired in fee simple is located in the southwest corner of the future Runway Protection Zone (RPZ). This land acquisition project was reviewed and approved with separate NEPA and SEQR determinations.

In addition, the four acres to be acquired in fee simple would have easement only restrictions that would preclude any feasible development. This fact also drove the decision to acquire this portion of the parcel. The easement restrictions would be 0-20 ft. on a significant portion of the 4 acre parcel which was determined based on a comparison of the part 77 surfaces and the existing ground topography. Do to the very restrictive easement, which would essentially be equivalent in value to purchasing the 4 acres, the decision was made to pay full market value in fee simple.

The draft Runway 1 Extension Environmental Assessment document (currently being prepared) does describe this project in section 2.01-1 entitled "background". A separate public hearing will be conducted for the Runway 1 Extension project later in 2014, any comments made based on the runway extension will be addressed at that time.

While it is true that the acquisition would also be required by the FAA prior to any consideration for funding a future 1,000 foot extension for Runway 1 end, that fact is ancillary to this project's main purpose. The avigation easement is required regardless of the future runway extension.

4. a. *Comment/ Question:* Will Warren County be compensated by the FAA and NYSDOT for additional court ordered compensation, beyond the appraised amount, as a result of the Eminent Domain process?

b. *Submitted by:* Beaty

c. *Response:* Yes. The FAA allows reimbursement not to exceed 25% beyond the existing grant amount. Anything beyond 25% will be solely Warren County's responsibility.

5. a. *Comment/ Question:* Is the (FAR) Part 77 Obstruction Evaluation, prepared by C&S Engineers, dated January 2002, still valid since the airport reference code has been downgraded from C-III to B-II?

b. *Submitted by:* Whitehead, Mackey

c. *Response:* Yes. The 2002 study was prepared based on the Title 14 Code of Federal Regulations Part 77 "Safe, Efficient Use, and Preservation of Navigable Airspace", which establishes a complex structure of imaginary surfaces in relation to each runway at civil airports. The size of each imaginary surface is based on the category of each runway according to the type of instrument

approach available or planned for that runway. Runway 1 end at Floyd Bennett Memorial Airport has a category 1 instrument approach, with planned visibility minimums as low as ½ mile, after obstruction mitigation is completed. Part 77 does not change based on the Airport Approach Category (letter) or Airplane Design Group (roman numerical).

All technical information presented at the public meeting was prepared, researched and confirmed accurate prior to the meeting.

6. a. *Comment/ Question:* Have trees already been cut on the Forest Enterprises Management Parcel? If so, is there still a need for the land/easement acquisition? Are we using a 34:1 or 50:1 approach surface?

b. *Submitted by:* Whitehead

c. *Response:* C&S Engineers completed an “Obstruction Evaluation of Runway End Siting Requirements to Runway 1-19 & 12-30”, dated April 2009, and based on a 34:1 approach surface. Per drawing sheet #C-104, runway end siting surface obstacles were identified on the Forest Enterprises Parcel based on the existing runway end. This situation was identified as an urgent safety issue since the FAA mandates a clear Runway End Siting Surface (RESS). Obstacles penetrating the RESS cannot be lighted and would result in a displaced threshold if not mitigated within a three year period, or measureable progress is being made. A displaced threshold would reduce the landing distance for aircraft. In addition, a displaced threshold would likely result in an inoperative Instrument Landing System since its location is dependent upon the runway threshold location. As such, Warren County was able to negotiate with the landowner and remove trees on a five acre area in 2009-2011. This work included tree topping/cutting only and did not clear or disturb the ground. The area has not been maintained since the original tree removal. Understory vegetation has grown significantly, again threatening to penetrate the protected approach surfaces. Due to the elevation above sea level (much higher than the Runway end) on the 4 acre parcel, the Part 77 surfaces are very close to ground level. In fact, a tree can become an obstruction on this particular piece of the parcel if its height is between 0-20 feet. These trees will quickly grow to become more critical RESS penetrations.

Title 14 Code of Federal Regulations Part 77 still remain as shown on the 2002 obstruction study. Part 77 surface penetrations are still important for mitigation if practical, but not mandatory. The approach surface for Part 77 is a 50:1 surface, more restrictive than the RESS. The FAA suggests that airport sponsors clear Part 77 surfaces if feasible and also allows them to be lighted and/or marked as an alternative. More importantly, this acquisition will allow the County to prevent existing or proposed manmade objects, terrain or natural re-growth from extending upward into navigable airspace, thereby providing safety to aircraft. The easement will allow the County to enforce and to protect necessary airspace, based on Part 77 surfaces. The inability to enforce height restrictions on future development on the parcel may result in the need to displace the threshold, thereby severely impacting aircraft operations and airport revenue.

7. a. *Comment/ Question:* Will wetlands or the environment be damaged or filled? What about the MARL FEN? What other environmental effect will there be?

b. *Submitted by:* Westcott, Lynch, Reid, Mandwelle

c. *Response:* No. The future obstruction mitigation on the parcel in question will include tree removal only. No ground disturbance is planned. The MARL FEN is located over one half mile north of the tree removal areas associated with acquisition of this parcel.

Mitigation of obstructions upon this parcel will include tree topping on approximately 20 acres of land. Stump removal, grubbing, and or soil disturbance is not included in the project. Note that only approximately five acres of trees were removed previously.

8. a. *Comment/ Question:* What is the primary driver or need of this project? What is the public benefit?

b. *Submitted by:* Mandwelle, Whitehead, Glendening

c. *Response:* This land acquisition project is required to mitigate known obstructions and to control airspace to the existing runway end. In addition, a small additional expense is being incurred to protect the Runway Protection Zone and avigation surfaces based on a future 1,000 foot extension to the Runway 1 end. It makes good financial sense to protect for the future now, instead of doing all the necessary technical procedures and landowner negotiation again in the future. A second round of land acquisition for the same parcel would likely not be reimbursable by the FAA or NYSDOT.

The purpose of this acquisition is to mitigate obstructions to the navigable airspace identified in the January 2002 (FAR) Part 77 Obstruction Evaluation, and known to exist on this parcel and lying within the runway 1 approach surface. Obstructions to the Runway End Siting Surface to the existing Runway end, and to the future Runway extension, which fall within the identified parcel, will also be mitigated. In addition, the fee simple area includes a portion of the parcel which falls within the future Runway Protection Zone. Land/easement acquisition by the Sponsor is required prior to any mitigation. Completion of this project will allow these and other obstructions to be removed, lowered and/or lighted, and will allow the Sponsor to maintain the growth of natural vegetation and restrict the erection of any airspace penetrating structures or objects within the easement area. The ultimate benefit is to maintain the safety of the flying public. In addition, we expect that the existing instrument approach procedure minimums will be reduced after tree mitigation activities are completed. This means that aircraft will have a greater chance of landing in poor weather conditions without being diverted to other regions.

9. a. *Comment/ Question:* As Warren County is the actual condemner, per Section 204 of Eminent Domain Law, why is the meeting by contract engineers and airport officials?

b. *Submitted by:* Lynch

c. *Response:* Warren County hired C&S Engineers, and sub-consultant R.K. Hite to assist them through this process. The extent of effort and detailed knowledge of the laws required to undertake this process by the County would not be economical. It is common for specialized firms such as R.K. Hite to assist municipalities with this process. Warren County officials and ultimately the Board of Supervisors will review and approve all actions moving forward. All the necessary procedural steps described in the Eminent Domain Procedural Law (EDPL) are being adhered to.

10. a. *Comment/ Question:* At what point does the County intend to obtain a certificate of environmental compatibility or public need, as required?

b. *Submitted by:* Lynch

c. *Response:* The NEPA process has been completed and the FAA made a determination on August 17, 2009 that this project qualifies for a Categorical Exclusion from a preparation of a formal environmental assessment. The SEQR process was also conducted by means of a Short Environmental Assessment Form for Unlisted Actions and a Negative Declaration was completed

by Warren County as lead agency (resolution 562 of 2009). Please note that the project description changed slightly based on landowner negotiations and FAA/ County modifications. As such, the SEQR process is currently being amended.

11. a. *Comment/ Question:* The airport has existed for 70 years without “avigation easements”, especially with town zoning around building heights, why are they now necessary?

b. *Submitted by:* Lynch

c. *Response:* Warren County has pursued land acquisition and easements in the past which are all documented on the Airport Property Map in an ongoing effort to protect and maintain efficient use of airspace surrounding Floyd Bennett Memorial Airport. Since 1942, nearly 22 parcels have been acquired and 18 easements have been granted surrounding the airport from 1942 to 2006. In addition, the Airport Property Map shows planned land acquisition and easement parcels, including the parcel owned by Forest Enterprises Management.

The town zoning for building heights does not correspond to the height restrictions imposed by Part 77 imaginary surfaces. For instance, the approximate local building height restriction is typically 35 feet. In the case of the Forest Enterprises Parcel, buildings of this height would be an obstruction to airspace on 24 acres of the parcel. Without an easement to protect the airspace, a developer could build a fixed obstacle which would directly impact the location of the runway landing threshold.

12. a. *Comment/ Question:* Are we currently compliant with FAA regulations without pursuing this land acquisition project?

b. *Submitted by:* Whitehead

c. *Response:* No. Obstructions to the existing runway configuration remain on the Forest Enterprises Management Parcel, even after partial tree removal a few years ago. When airport owners or sponsors, planning agencies, or other organizations accept funds from FAA-administered airport financial assistance programs, they must agree to certain obligations (or assurances). These obligations require the recipients to maintain and operate their facilities safely and efficiently and in accordance with specified conditions. The assurances may be attached to the application or the grant for Federal assistance and become part of the final grant offer or in restrictive covenants to property deeds. The duration of these obligations depends on the type of recipient, the useful life of the facility being developed, and other conditions stipulated in the assurances. Two of the grant assurances read as follows:

“Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.”

“Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect

to the airport, of the noise compatibility program measures upon which Federal funds have been expended.”

13. a. *Comment/ Question:* The hearing of 7/1/14 should be rescheduled for a future date and conducted properly.
b. *Submitted by:* Whitehead
c. *Response:* All the necessary procedural steps described in the Eminent Domain Procedural Law (EDPL) are being adhered to and the hearing was conducted in accordance with them. The hearing for this project will not be performed again.
14. a. *Comment/ Question:* Was a County resolution passed to move forward with the project based on removing obstructions?
b. *Submitted by:* Whitehead
c. *Response:* Yes. Resolution #264, dated May 16, 2014 states the following “..., the County must acquire off-airport land/avigation easements for the removal of obstructions to the navigable airspace on and over a parcel adjacent to the Warren County Airport and owned by Forest Enterprises management, Inc. in the Town of Queensbury...”
15. a. *Comment/ Question:* What is the cost for this acquisition, including future tree removal?
b. *Submitted by:* Mandwelle
c. *Response:* The total land acquisition cost for this parcel is \$380,700 which includes reimbursement to the landowner, technical assistance and legal fees. The FAA/NYS DOT have already issued an AIP grant for this land acquisition. 90% of the project cost is provided by the FAA, 5% by the NYSDOT, and 5% by Warren County. The Warren County share is \$19,035 dollars.

Based on recent tree removal bids, the estimated project cost to remove obstructions to 20 acres of land is \$250,000. This would include design, construction, and construction administration & observation and is eligible for reimbursement by the FAA and NYSDOT. This work would likely not be a stand-alone project, but would be combined with a larger construction project for economy of scale considerations. Maintenance costs are considered minimal and would include vegetation/brush mowing once or twice a year by existing airport maintenance employees.